IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.868 OF 2003

IN

NOTICE OF MOTION NO. OF 2003

IN

L.C.SUIT NO.4773 OF 2003

ALONG WITH

CIVIL APPLICATION NO.1163 OF 2003

Surinder Singh Bakshi ...Appellant

Versus

The Municipal Corporation of

Greater Mumbai ...Respondent

.....

Mr.Amit Shastri i/b Khilnani & Co. for Appellant.

Mrs.Joglekar for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 1, 2006.

P.C.

1. Heard Counsel for the parties.

2. This Appeal arises from order dated 7th October 2003 passed by the Trial Court in L.C.Suit No.4773 of 2003, refusing to grant ad-interim relief as prayed during the pendency of the Notice of Motion. The Court below has recorded that no document has been produced to establish the existence of the suit structure prior to 1958. Counsel for the Appellant has relied on the agreement dated 20th September 1958. According to the Appellant, the existence of the suit structure at the relevant time in September 1958 can be assumed on the basis of this Agreement. The Court below, however, has not accepted that argument while refusing to grant ad-interim relief, for the reasons recorded in the impugned order.

3. As mentioned earlier, the impugned order was passed as back as on 7th October 2003. Indeed, this Appeal from Order was filed on 8th October 2003 and order of status-quo with regard to the suit property was granted as ad-interim order in the present Appeal on 9th October 2003. According to the Counsel for the Corporation, however, the

suit structure has been removed on 8th October 2003 which fact can be ascertained from the report available in the Office of the ‘A’ Ward. It is not necessary for me to enter into the controversy whether the suit structure has been removed on 8th October 2003.

4. The fact remains that order of status-quo came to be passed on 9th October 2003 and that order is operating between the parties since then. In the event, the suit structure was removed prior to 9th October 2003 as contended by Respondent, it will follow that the Appellant was bound by the order of status-quo and could not have re-erected that structure once again. However, if the fact recorded in the Office of ‘A’ Ward that suit structure was removed on 8th October 2003 is incorrect, in that case, the Appellant would be entitled for protection of the suit structure in view of the order of status-quo dated 9th October 2003.

5. The appropriate course, in my opinion, is to direct the Trial Court to dispose of the pending

Notice of Motion taken out by the Appellant at the earliest and more so, because the same is pending since 2003. Notice of Motion be disposed of within six weeks from the receipt of writ of this Court or on being informed about this order by any party to the Suit.

6. It will be open to the Officials of the Corporation to visit the site in the course of the day and to take photographs about the nature of structure standing on the site and make panchnama to that effect. The panchas should be independent persons so that, that evidence can be considered while disposing of the Notice of Motion.

7. Counsel for the Appellant invited my attention to the decision of the Supreme Court reported in **1995 Supp. (4) SCC 426 in the case of Syed Muzaffar Ali & Ors. vs. Municipal Corporation of Delhi**, to contend that the Appellant has made application for regularisation of suit structure as back as on 30th September 2003. There is force in the objection taken by the Counsel for the Corporation. Firstly, the Application is

addressed to Assistant Municipal Commissioner who is not the competent Authority. The Competent Authority for regularisation of structure is Executive Engineer (Building Proposal City). Secondly, if the structure is already removed on 8th October 2003, the question of regularising the structure does not arise. All those matters will be considered by the Trial Court. It is made clear that if the finding of the Trial Court is that the suit structure was demolished on 8th October 2003, the Trial Court shall direct the Appellant to remove the offending structure forthwith. This is so because the said finding will mean that the offending structure has been re-erected by the Appellant inspite of the status-quo order passed by this Court on the 9th of October 2003.

8. Accordingly, this Appeal and the accompanying Civil Application are disposed of with above observations. All questions are left open to be decided by the Trial Court.

A.M.KHANWILKAR, J.